IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6055 OF 1995

Shri Samaruram B. Yadav .. Petitioner

Vs

M/s. Santram & Sons & Anr. .. Respondents

Mr. P.M. Patel for Petitioner.
None for the Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 17, 2005.

ORAL JUDGMENT:

1. The petitioner-employee has assailed the Judgment and Order dated 14-9-1995 rendered by the learned Member of the Industrial Court at Mumbai in Revision Application No.46 of 1995 whereby the said revision came to be allowed by quashing and setting aside the Judgment of the Labour Court in Complaint (ULP) No.201 of 1991 rendered on 28-9-1994 directing reinstatement of the petitioner in his original post with full backwages and continuity of service with effect from 12-6-1991.

2. The learned counsel for the petitioner concluded his arguments on 9-6-2005 and none was present for the respondent-employer. The petition was, therefore, adjourned to 10-6-2005 and again the learned counsel for the respondent remained absent and, therefore, the petition was adjourned to 16/6/2005 for arguments to be advanced by the learned counsel for the respondents and today also none is present for the respondent.

3. It was the case of the petitioner that he was working as a driver under the respondent no.1-Partnership Firm which was engaged in the business of materials and supply of articles to the Government and his last drawn salary was Rs.1000/- per month. The respondent had about 25 drivers and the total number of employees were about 40. The services of most of the drivers were terminated abruptly by obtaining their signatures on the papers prepared by the employer. But when petitioner’s turn came to sign the said paper prepared by the employer he declined and he was told by the management that his services

were not required. He was not allowed to report for the duty from the next date onwards and, therefore, he approached the Government Labour Officer. Conciliation meetings were held and ultimately consideration was paid. He, therefore, approached the Labour Court by filing Complaint (ULP) No.201 of 1991. The employer filed Written Statement at Exh.63 and claimed that the complainant was still in its service and there was no termination of his service. It was contended that it owned only 9 trucks and it did not employ 25 drivers. It was further stated by the employer that the complainant was working from September, 1985 onwards and he had not put in 25 years of service. The allegation of termination of service of most of the drivers abruptly by obtaining resignations was also denied. But the employer admitted that the Government Labour Officer had called conciliation meetings.

4. By assessing the oral and documentary evidence of the respective parties, the Labour Court noted that the service of the complainant was terminated and the

said termination was illegal. The Labour Court further observed that the defence of the employer that there was no termination of service could not be proved by the documentary evidence. Mr.Ramesh Jaggi, Manager of the Respondent No.1 was examined at Exh.C-10 and in his cross examination when he was confronted with the salary for the month of July 1991 he admitted that at Sr.No.6 the name of the complainant was mentioned and against his name remark "left" was written. He also admitted that for the month of May and June 1991 the name of the complainant had appeared at Sr.No.2 but in the month of August 1991 his name appeared at Sr.No.10 i.e. last serial number. Some letters allegedly said to have been issued against the complainant and sent by post were placed on record but there was no proof that they were returned as they were refused to have been accepted by the complainant. The remark "left" also appeared against the names of other drivers and cleaners like Arjun Nare, Nijammuddin Ali Ahmed, Shivnath Rajbhar, Triveni Rajbhar, Premchand R. Kumbhar, Arjuna Kumbhar and Mallappa Kumbhar in the salary register for the month of July 1991. The Labour Court also noted that

there was a settlement signed between the employer and the elected representatives of the workmen (Exh."E"). To the said settlement, the complainant was one of the signatories. By the said settlement the drivers' salary was revised to Rs.1000/- per month. The Labour Court recorded an irresistible conclusion that the employer had terminated the service of the complainant orally and illegally on 12-6-1991. The said termination was illegal and in contravention of the mandatory requirements of Section 25F of the Industrial Disputes Act, 1947.

5. When the employer approached the Industrial Court in its revision, the Industrial Court proceeded on the basis that in a case of oral termination the onus was on the complainant to prove it by satisfactory and cogent evidence. On assessment of the evidence adduced before the Labour Court, the Industrial Court noted that the name of the complainant was still shown in the muster roll and the word "left" does not mean termination and it would be abandonment or quit had recorded a finding that the

Labour Court had erred in holding that the respondent-employer had terminated the services of the complainant. There was no domestic inquiry or notice of termination and, therefore, the termination of service could not be proved, as per the Industrial Court. The further question of victimisation or colourful exercise of employer’s rights or termination for patently false reasons or for breach of principles of natural justice did not arise, noted the Industrial Court. The reasoning set out by the Industrial Court for reversing the view taken by the Labour Court is undoubtedly palpably erroneous. The findings recorded are contrary to the evidence and the conclusions arrived at holding the Labour Court committing an error are unsustainable on the face of the evidence discussed by the Labour Court. Under such circumstances the impugned Judgment and Order rendered by the Industrial Court deserves to be quashed and set aside by restoring the relief granted by the Labour Court.

6. In the result, this petition succeeds and the

same is hereby allowed. The Judgment and Order in Revision Application No.46 of 1995 is hereby quashed and set aside and the Judgment and Order in Complaint (ULP) No.201 of 1991 is hereby confirmed. The decision of the Labour Court shall be implemented by the respondents within a period of two months and a report to that effect shall be submitted to the Registry of this Court.

. Rule is made absolute accordingly with no order as to cost.

(B.H. Marlapalle,J.)